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2  
3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 WILLIE HENRY,

Case No. 2:19-cv-00360-MMD-NJK

7 Plaintiff,

ORDER

8 v.

9 DOVENMUEHLE  
MORTGAGE, *et al.*,

10 Defendants.  
11

12 **I. SUMMARY**

13 Defendant Experian Information Solutions, Inc. (“Experian” or “Defendant”) moves  
14 to dismiss (the “Motion”) this consumer finance matter brought primarily under the Fair  
15 Credit Reporting Act (“FCRA”).<sup>1</sup> (ECF No. 36.) Each party has also submitted a motion for  
16 leave to file supplemental authority (ECF Nos. 46, 53), which the Court grants. For the  
17 reasons discussed below, the Court will also grant the Motion except as to Plaintiff’s claim  
18 under 15 U.S.C. § 1681i(a).

19 **II. BACKGROUND**

20 **A. FCRA**

21 Congress enacted the FCRA in 1970 “to protect consumers from the transmission  
22 of inaccurate information about them[.]” *Ramirez v. TransUnion LLC*, Case No. 17-17244,  
23 2020 WL 946973, at \*13 (9th Cir. Feb. 27, 2020) (citations and internal quotes omitted).  
24 The statute was created in response to “concerns about corporations’ increasingly  
25 sophisticated use of consumers’ personal information in making credit and other  
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28 <sup>1</sup>The Court has also reviewed Plaintiff Willie Henry’s response (ECF No. 41) and  
Defendant’s reply (ECF No. 42).

1 decisions.” *Syed v. M-I, LLC et al.*, 846 F.3d, at 1037 (9th Cir. 2017) (citing the FCRA,  
2 Pub. L. 91-508, Section 602, 84 Stat. 1114, 1128). Given the growing importance of  
3 consumer credit and consumers’ lack of control over what information is contained in their  
4 credit reports, the FCRA intends to provide statutory protection for already recognized  
5 legal harms (albeit as applied to a new industry). *In re Ocwen Loan Servicing LLC Litig.*,  
6 240 F. Supp. 3d 1070, 1073 (D. Nev. 2017).

7 To protect a consumer’s interest in accurate credit reporting about them, 15 U.S.C.  
8 § 1681g(a) allows consumers to request their credit file from a credit reporting agency  
9 (“CRA”), review the sources of the information within it and identify any inaccuracy. See  
10 *Ramirez*, 2020 WL 946973, at \*13. (citation omitted)). Consumers can then correct any  
11 inaccuracy by utilizing the “grievance procedure established under § 1681i,” which  
12 requires in part that a CRA conduct a “reasonable reinvestigation” into the matter. *Id.* at  
13 \*13 (same). Additionally, § 1681e requires that a CRA use “reasonable procedures to  
14 assure maximum possible accuracy” of a consumer’s credit information when making a  
15 “consumer report” for use by third parties.

## 16 **B. Factual Background**

17 The following facts are taken from the First Amended Complaint (“FAC”) (ECF No.  
18 29), unless indicated otherwise.

19 On July 13, 2016, Plaintiff filed for Chapter 13 bankruptcy in which Defendant  
20 received notice thereof.<sup>2</sup> (*Id.* at 3.) At that time, Plaintiff owned real property, which was  
21 subject to a first mortgage deed of trust serviced by Dovenmuehle. (*Id.*) On December 19,  
22 2016, the bankruptcy court approved a trial modification of the Dovenmuehle mortgage  
23 where Plaintiff’s monthly payment of \$1,268.25 would be reduced to \$1,160.77. (*Id.* at 4.)  
24 On June 9, 2017, the bankruptcy court permitted a loan modification that recapitalized all  
25 pre-petition and post-petition arrears such that no arrears were presently due. (*Id.*)

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27 <sup>2</sup>Plaintiff originally filed this case against Experian, Dovenmuehle Mortgage  
28 (“Dovenmuehle”), Equifax Information Services LLC, IBEW Plus Credit Union, and Trans  
Union LLC. But all Defendants other than Experian have been dismissed. (See ECF Nos.  
20, 31, 45, 52.)

1 On March 15, 2017, Defendant provided Plaintiff with his credit file ("First Report").  
2 (*Id.* at 8; ECF No. 36-2.) This file was purportedly inaccurate because it did not report the  
3 Dovenmuehle loan as "paid as agreed," even after Plaintiff complied with the obligations  
4 of his loan modification. (ECF No. 29 at 22.)

5 On May 18, 2017, Plaintiff sent Defendant a dispute letter notifying Defendant of  
6 the inaccurate report and requested that the information be removed, corrected, or deleted  
7 (the "Dispute Letter"). (*Id.*) Plaintiff also requested that in the event Defendant failed to  
8 make the requested corrections, Defendant should include a statement on Plaintiff's credit  
9 report that the Dovenmuehle account was in dispute. (*Id.* at 23.) Plaintiff asserts that  
10 Defendant was required to investigate the dispute under the Fair Credit Reporting Act  
11 ("FCRA"), 15 U.S.C. § 1681i. (*Id.*)

12 On June 26, 2017, Defendant provided Plaintiff with its investigation results in a  
13 second credit file ("Second Report"), which continued to incorrectly report a monthly  
14 payment of \$1,240 for the Dovenmuehle account, as well as a \$18,349 as "past due as of  
15 Jun 2016." (ECF No. 29 at 8, 23; ECF No. 36-3.)

16 Plaintiff asserts two sets of claims against Defendant for general  
17 misrepresentations and omissions in Plaintiff's credit file (the "First Set of Claims"), and  
18 inaccurate reporting of his Dovenmuehle account (the "Second Set of Claims").

19 In the First Set of Claims, Plaintiff specifically alleges that Defendant (1) failed to  
20 provide descriptions of certain dates in Plaintiff's account history in a manner  
21 understandable to the average consumer, (2) failed to explain why unspecified  
22 "soft inquiries"<sup>3</sup> appearing on Plaintiff's consumer disclosures were made, (3)  
23 misrepresented that Defendant only shares credit information for permissible purposes,

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27 <sup>3</sup>A "soft inquiry" appears to be an inquiry into a consumer's credit file that is  
28 "purportedly only shared with the Plaintiff." (*Id.* at 10.)

(4) failed to disclose “behavioral data”<sup>4</sup> and the third parties with whom Defendant shares this data, (5) failed to disclose the names of all persons who procured a consumer report during the six-month period preceding the date of request, (6) failed to disclose in plain English the sources of the information in Plaintiff’s credit file, and (7) misrepresented that Plaintiff’s address information does not affect credit scores. (ECF No. 29 at 8-21.) Plaintiff alleges that these misrepresentations and omissions violate §§ 1681(g)(a)(1) and (a)(2), and NRS §§ 41.600, 598.0915(5), and 598.0923(3). (*Id.*)

In Plaintiff’s Second Set of Claims, Plaintiff alleges that Defendant failed to conduct a reasonable investigation into his Dovenmuehle account (violating §§ 1681i(a)-(b), 1681e(b), and 1681s-2(b), and NRS § 598C.160), and failed to maintain reasonable procedures to ensure the maximum possible accuracy in its reporting (required under § 1681e(b)). (*Id.* at ¶ 100.)

### **III. LEGAL STANDARD**

A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555.) “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (internal citation omitted). And it must contain either direct or inferential allegations concerning “all the material elements necessary to sustain recovery under *some* viable legal theory.” *Twombly*, 550

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<sup>4</sup>Plaintiff alleges that Defendant “amasses and maintains an enormous amount of ‘behavioral’ data on consumers, such as household income, purchase history, and even whether an individual is a ‘dog’ or cat’ person.” (*Id.* at 13.)

1 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir.  
2 1989) (emphasis in original)).

3 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to  
4 apply when considering motions to dismiss. First, a district court must accept as true all  
5 well-pled factual allegations in the complaint; however, legal conclusions are not entitled  
6 to the assumption of truth. See *Iqbal*, 556 U.S. at 678-79. Mere recitals of the elements of  
7 a cause of action, supported only by conclusory statements, do not suffice. See *id.* at 678.  
8 Second, a district court must consider whether the factual allegations in the complaint  
9 allege a plausible claim for relief. See *id.* at 679. A claim is facially plausible when the  
10 plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that the  
11 defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint does  
12 not permit the court to infer more than the mere possibility of misconduct, the complaint  
13 has "alleged—but it has not show[n]—that the pleader is entitled to relief." *Id.* at 679  
14 (internal quotation marks omitted). This is insufficient. When the claims in a complaint  
15 have not crossed the line from conceivable to plausible, the complaint must be dismissed.  
16 See *Twombly*, 550 U.S. at 570.

17 When a court grants a motion to dismiss, it must then decide whether to grant leave  
18 to amend. A court should "freely give" leave to amend when there is no "undue delay, bad  
19 faith[,] dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
20 amendments previously allowed, undue prejudice to the opposing party by virtue of . . .  
21 the amendment, [or] futility of the amendment." Fed. R. Civ. P. 15(a); *Foman v. Davis*, 371  
22 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear that the  
23 deficiencies of the complaint cannot be cured by amendment. See *DeSoto v. Yellow*  
24 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

#### 25 **IV. DISCUSSION**

26 Defendant seeks dismissal in part for lack of standing, which the Court will address  
27 first, and for failure to state a claim. Because the Court finds that it has jurisdiction over  
28 Plaintiff's Second Set of Claims, the Court will then address the merits of those arguments.

1 Ultimately, the Court finds that Plaintiff has not stated a claim for failure to conduct a  
2 reasonable investigation<sup>5</sup> or for failure to maintain reasonable procedures.

3 **A. Standing**

4 Lack of standing is a defect in subject matter jurisdiction and may be challenged  
5 under Rule 12(b)(1). See *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541  
6 (1986). To establish an injury in fact, a plaintiff must show that he or she (1) suffered an  
7 invasion of a legally protected interest (2) that is concrete, (3) particularized and (4) actual  
8 or imminent, not conjectural or hypothetical. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548  
9 (2016), *as revised* (May 24, 2016) (citations omitted). While a concrete injury may be  
10 intangible and yet still confer Article III standing, a plaintiff cannot “allege a bare procedural  
11 violation [under the FCRA], divorced from any concrete harm.” *Id.* at 1549 (same).  
12 Allegations of inaccurate credit reporting are insufficient to demonstrate an injury-in-fact  
13 because “not all inaccuracies cause harm or present any material risk of harm.” *Id.* at  
14 1550; see *id.* (holding that a website operator’s alleged publication of inaccurate  
15 information concerning plaintiff was insufficient to establish a concrete injury).

16 Plaintiff’s First Set of Claims alleges that Defendant’s general misrepresentations  
17 and omissions damaged his creditworthiness and/or “created an imminent risk of damages  
18 to [his] creditworthiness.” (ECF No. 29 at 20-21.) But Plaintiff has failed to show a concrete  
19 injury because he has not alleged how the “credit report harm[s] [his] ability to enter a  
20 transaction with a third party in the past or imminent future.” *Jaras v. Equifax Inc.*, 766 F.  
21 App’x 492, 495 (9th Cir. 2019).<sup>6</sup> Additionally, “it is not obvious that [it] would, given that  
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23 <sup>5</sup>The Court dismisses Plaintiff’s claim under § 1681s-2(b) because that section  
24 pertains to furnishers, whereas here the parties do not dispute that Defendant is a CRA.  
25 *Dyson v. Equifax, Inc.*, No. 16-CV-03327-BLF, 2017 WL 1133517, at \*2 (N.D. Cal. Mar.  
26 27, 2017) (holding that plaintiff failed to allege a viable claim against an CRA because she  
27 only asserted a claim under § 1681s-2(b), which is only applicable to furnishers). Dismissal  
28 is without leave to amend because amendment would be futile.

<sup>6</sup>The Court finds *Jaras* persuasive and applies it here. Although not binding  
precedent, unpublished decisions have persuasive value and may be relied on. See, e.g.,  
*In re Ocwen Loan Servicing LLC Litigation*, No. 3:16-cv-200-MMD-WGC, 2019 WL  
690353, at \*2 (D. Nev. Feb. 19, 2019); see also Ninth Cir. R. 36-3 (“Unpublished Ninth  
Circuit decisions may be cited commencing with decisions issued in 2007.”).

1 Plaintiff['s] bankruptc[y] [itself] cause[d] [him] to have [a] lower credit score[] with or without  
2 the alleged misstatements.” *Id.* at 494. Plaintiff alleges that his current creditors “might  
3 take adverse actions due to incongruities in his file which Plaintiff was not able to fix.” (ECF  
4 No. 29 at 21.) But *Jaras* foreclosed “broad generalizations about how lower [credit] scores  
5 can impact lending decisions generally—without any specific allegation that lower [credit]  
6 scores impact lending decisions regarding individuals who are already in Chapter 13  
7 bankruptcy.” *Id.* at 494-95; *see also Carson v. Experian Info. Sols., Inc.*, Case No. 8:17cv-  
8 2232-JVS-KES, 2019 WL 3073993, at \*7 (C.D. Cal. July 9, 2019) (“The inability to  
9 completely assess their own information due to omissions in their § 1681g disclosures is  
10 not a sufficiently concrete injury to confer standing.”). For the foregoing reasons, the Court  
11 dismisses Plaintiff’s First Set of Claims for lack of standing. But the Court will grant Plaintiff  
12 an opportunity to amend because he can conceivably cure the jurisdictional deficiencies.<sup>7</sup>  
13 *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1988).

14 In contrast, the Court finds that Plaintiff has standing to bring his Second Set of  
15 Claims. Plaintiff alleges that as a result of Defendant’s “continued incomplete and  
16 inaccurate reporting of the disputed information, Plaintiff has suffered actual damages”

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17 <sup>7</sup>For Plaintiff’s benefit, the Court also notes that Plaintiff has only alleged  
18 speculative injuries in relation to certain claims. For example, Plaintiff’s allegation that his  
19 list of addresses is a “potential” risk factor, “*can* serve as a factor in determining risk  
20 premiums for insurance or eligibility for employment, and “*might*” impact his credit score  
21 hinges on a hypothetical injury. (ECF No. 29 at 19-20 (emphasis added).) Similarly,  
22 Plaintiff “does not allege that any of the information for which the source was not provided  
23 was in any manner inaccurate,” therefore any “violation is procedural, rather than  
24 concrete.” *Benton v. Clarity Servs., Inc.*, Case No. 16-cv-06583-MMC, 2017 WL 345583,  
25 at \*2 (N.D. Cal. Jan. 24, 2017) (citation omitted). The Court also struggles to see how any  
26 soft inquiry would impact Plaintiff’s credit or any of his transactions with a third party if  
27 Plaintiff concedes that soft inquiries are “only shared with the Plaintiff.” (ECF No. 29 at 10;  
28 *see also id.* at 21 n.32 (“Several of these soft inquiries on [the First Report and Second  
Report] appeared to have been made by Experian.”); *id.* at 25 n.34 (same).) Finally,  
Plaintiff failed to allege that Defendant specifically collected behavioral data on him,  
suggesting that Plaintiff has only alleged a speculative violation. *See Diaz v. Chase*, 416  
F. Supp. 3d 1090, 1097 (D. Nev. 2019) (holding that plaintiff failed to state a claim against  
Experian where he speculated that Experian had behavioral data on him simply because  
Experian generally “stores data on more than 300 million individuals” (citations and internal  
quotes omitted).)

1 such as transportation costs and emotional distress. (ECF No. 29 at 24-25.) Because  
2 transportation costs are recoverable as an out-of-pocket expense, Plaintiff has sufficiently  
3 alleged a concrete injury for Article III standing. See *Grove v. Wells Fargo Fin. California,*  
4 *Inc.*, 606 F.3d 577, 580 (9th Cir. 2010) (holding that, because the FCRA provides for  
5 “reasonable attorney’s fees,” district courts have discretion to award out-of-pocket  
6 expenses like travel costs to the prevailing party); *Uehara v. TD Bank, Nat’l Ass’n*, Case  
7 No. 2:17-cv-190-GMN-CWH, 2018 WL 1472712, at \*3 (D. Nev. Mar. 26, 2018) (holding  
8 that plaintiff has standing where he pled he incurred “out-of-pocket expenses in  
9 challenging the defendants’ wrongful representations”); *Harris v. Nissan-Infiniti LT*, Case  
10 No. 2:17-cv-191-JCM-VCF, 2018 WL 387397, at \*4 (D. Nev. Jan. 11, 2018) (holding that  
11 plaintiff sufficiently pled a concrete injury where she alleged she suffered actual harm in  
12 the form of “out-of-pocket expenses”).

13 Furthermore, Plaintiff can recover damages for emotional distress in connection to  
14 any negligent violations of the FCRA. See *Guimond v. Trans Union Credit Info. Co.*, 45  
15 F.3d 1329, 1332-33 (9th Cir. 1995) (citing to 15 U.S.C. § 1681o). In *Guimond*, the plaintiff  
16 allegedly suffered “emotional distress, manifested by sleeplessness, nervousness,  
17 frustration, and mental anguish resulting from the incorrect information in her credit report.”  
18 *Id.* at 1332. The Ninth Court suggested that was enough to show actual damages when  
19 the court remanded the claim for trial.<sup>8</sup> *Id.* at 1333, 1336-37; see also *Dewi v. Wells Fargo*  
20 *Bank*, Case No. CV 12-2891 ABC SHX, 2012 WL 10423239, at \*8 (C.D. Cal. Aug. 8, 2012)  
21 (discussing *Guimond*). Similar to *Guimond*, Plaintiff alleges that he “suffered emotional  
22 distress in the form of feeling of discouragement, depression, sleeplessness, anxiety,  
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24 <sup>8</sup>In *Guimond*, the district court granted summary judgment in favor of a CRA  
25 because the court found that plaintiff’s emotional distress could not have resulted from the  
26 CRA’s activities where there was no denial of credit. *Id.* at 1332-33. The Ninth Circuit  
27 reversed and remanded, holding that a denial of credit is not a prerequisite for recovery  
28 under the FCRA. *Id.* at 1333. More importantly, the Ninth Circuit pointed out that “summary  
judgment is inappropriate” where the CRA “did not contest [plaintiff’s] claims of damages  
[for emotional distress], nor that those damages were a result of the inaccuracies in her  
credit report.” *Id.*



1 disappointment, frustration, and hopelessness as a result of his credit reporting issues.”  
2 (ECF No. 29 at 24-25.) Plaintiff has therefore shown a concrete injury for Article III  
3 standing. As such, the Court will address the merits of his Second Set of Claims.

4 **B. Reasonable Investigation**

5 Plaintiff has failed to state a claim under § 1681i(a)-(c) and NRS § 598C.160.

6 In support of his § 1681i(a) claim, Plaintiff argues that Defendant “fail[ed] to properly  
7 correct the inaccuracy [in his Dovenmuehle account] on reinvestigation” (ECF No. 41 at  
8 14). Under § 1681i(a), if a consumer disputes information in their file and notifies a CRA  
9 as such, the CRA must notify the furnisher<sup>9</sup> within five business days of the dispute, and  
10 promptly correct or delete from the consumer’s file any inaccurate, incomplete or  
11 unverifiable information. *Ghazaryan v. Equifax Info. Servs., LLC*, 740 F. App’x 157, 158  
12 (9th Cir. 2018) (citing to 15 U.S.C. §§ 1681i(a)(4), (a)(2)(A), and (a)(5)(A)(i)). Plaintiff  
13 alleges that Defendant “wrongly verified inaccurate information” from Dovenmuehle, the  
14 furnisher. (ECF No. 29 at 22-23.) But that is not the standard for liability—where a furnisher  
15 has confirmed that the disputed information is in fact correct, a CRA is entitled to rely on  
16 the furnisher’s determination if there is no reason to question the furnisher’s reliability.  
17 *Ghazaryan*, 740 F. App’x at 158. Here, Plaintiff has not alleged nor given any reason why  
18 Defendant could not rely on Dovenmuehle’s determination. See *id.* at 158. Furthermore,  
19 Defendant had no duty “to resolve [any] ultimate contradiction between” Dovenmuehle’s  
20 response versus Plaintiff’s dispute. *Id.*; see also *Carvalho v. Equifax Info. Servs., LLC*, 629  
21 F.3d 876, 891 (9th Cir. 2010) (“[CRAs] are not tribunals. They simply collect and report  
22 information furnished by others.”). To the extent Plaintiff pleads in the alternative that  
23 Defendant “failed to notify Dovenmuehle” of the disputed information (ECF No. 29 at 23),  
24 Plaintiff has sufficiently stated a claim for relief under § 1681i(a). See Fed. R. Civ. P.  
25 8(e)(2) (allowing plaintiffs to plead in the alternative “as many separate claims or defenses  
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27 <sup>9</sup>With exceptions that do not apply here, a furnisher is “an entity that furnishes  
28 information relating to consumers to one or more [CRAs] for inclusion in a consumer  
report.” 12 CFR § 1022.41(c).

1 as [the plaintiff] has regardless of consistency and whether based on legal, equitable, or  
2 maritime grounds.”) The Court therefore denies the Motion as to Plaintiff’s § 1681i(a)  
3 claim.

4 Plaintiff alleges that Defendant violated § 1681i(b)-(c) by failing to include a  
5 statement in Plaintiff’s credit report explaining that the Dovenmuehle account was in  
6 dispute. (ECF No. 29 at 24.) Section 1681i(b) provides that if a CRA’s “reinvestigation  
7 does not resolve the dispute, the consumer may file a brief statement setting forth the  
8 nature of the dispute.” 15 U.S.C. § 1681i(b). Unless there are reasonable grounds to  
9 believe that the consumer’s statement is frivolous or irrelevant, § 1681i(c) requires that  
10 the CRA include “in any subsequent consumer report containing the information in  
11 question” either the consumer’s statement or a codification or summary thereof. *Id.* at §  
12 1681i(c). Section 1681i(b)-(c) does not apply here because Plaintiff submitted his  
13 statement of dispute on May 18, 2017 in his Dispute Letter—prior to Defendant’s  
14 reinvestigation. (ECF No. 29 at 24.) Accordingly, the Court dismisses Plaintiff’s § 1681i  
15 claim without leave to amend because amendment would be futile.

16 Plaintiff has also failed to state a claim under NRS § 598C.160, which is nearly  
17 identical to § 1681i. If a consumer disputes information in their file and notifies a CRA as  
18 such, NRS § 598C.160 requires that the CRA notify “any institutional sources of the  
19 information” within five business days of the dispute, and complete a reinvestigation of the  
20 information within 30 days, unless the CRA determines the dispute to be frivolous or  
21 irrelevant. More importantly, NRS § 598C.160(2) states that “[i]f [a CRA] determines that  
22 the information is incorrect or can no longer be verified, it shall correct its files accordingly  
23 and notify the consumer.” Although Plaintiff alleges that Defendant failed to correct the  
24 inaccuracy in his Dovenmuehle account (ECF No. 29 at 24), he does not allege that  
25 Defendant found any issue with its Dovenmuehle reporting. Without the latter, Defendant  
26 is not obligated to revise its reporting. Furthermore, to the extent Plaintiff alleges that  
27 Defendant failed to investigate the Dispute Letter (ECF No. 29 at 23), the allegation is too

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1 conclusory. Therefore, the Court dismisses Plaintiff's claim under NRS § 598C.160 but  
2 grants Plaintiff leave to amend.

### 3 **C. Reasonable Procedures**

4 Under § 1681e(b) of the FCRA, "[w]henver a [CRA] prepares a consumer report[,]  
5 it shall follow reasonable procedures to assure maximum possible accuracy of the  
6 information concerning the individual about whom the report relates." 15 U.S.C. §  
7 1681e(b). As Defendant pointed out, Plaintiff alleges that Defendant violated § 1681e(b)  
8 by inaccurately reporting the Dovenmuehle account (ECF No. 29 at 24), but this is  
9 insufficient—Plaintiff has not pled that Defendant failed to follow reasonable procedures  
10 in maintaining its database. (ECF No. 36 at 10.) Because Plaintiff has not responded to  
11 this issue, the Court dismisses his § 1681e(b) claim without leave to amend. *See Shull v.*  
12 *Ocwen Loan Servicing, LLC*, No. 13-CV-2999-BEN WVG, 2014 WL 1404877, at \*2-3 (S.D.  
13 Cal. Apr. 10, 2014) ("Where a party fails to address arguments against a claim raised in a  
14 motion to dismiss, the claims are abandoned and dismissal is appropriate."); *see also*  
15 *Walsh v. Nev. Dep't of Human Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006) (holding that a  
16 claim raised in the complaint was waived when it was not re-raised in response to a motion  
17 to dismiss).

### 18 **V. CONCLUSION**

19 The Court notes that the parties made several arguments and cited to several cases  
20 not discussed above. The Court has reviewed these arguments and cases and determines  
21 that they do not warrant discussion as they do not affect the outcome of the Motion before  
22 the Court.

23 It is therefore ordered that Defendant's motion to dismiss (ECF No. 36) is denied in  
24 part and granted in part. It is denied as to Plaintiff's claim under 15 U.S.C. § 1681i(a). It is  
25 granted as to Plaintiff's remaining claims. Plaintiff will be given leave to amend his NRS §  
26 598C.160 claim and to cure the jurisdictional deficiencies as discussed herein. If Plaintiff  
27 wishes to file a second amended complaint, he must do so no later than 15 days after the  
28 file date of this order. Failure to file an amended complaint will result in dismissal of his

1 NRS § 598C.160 claim with prejudice. The case will otherwise proceed on Plaintiff's §  
2 1681i(a) claim.

3 The Court also grants each parties' motion for leave to file supplementary authority  
4 (ECF Nos. 46, 53).

5 DATED THIS 18<sup>th</sup> day of March 2020.

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8 MIRANDA M. DU  
9 CHIEF UNITED STATES DISTRICT JUDGE  
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